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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

19 ELIZABETH MOORE LAUGHLIN,
individually and on behalf of all others
20 similarly situated,

21 Plaintiff,

22 v.

23 VMware, Inc.,

24 Defendant.

Case No. 5:11CV- 00530-EJD

STIPULATION AND ~~PROPOSED~~
ORDER RE DEFENDANT'S SECOND
AMENDED MOTION TO DISMISS

Date Action Filed: February 3, 2011

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STIPULATION & ORDER RE DEFENDANT'S SECOND
AMENDED MOTION TO DISMISS
CASE NO. 5:11-cv-00530-EJD

STIPULATION

WHEREAS, Defendant has filed a Motion to Dismiss pursuant to F.R.C.P. 12(b)(6), which is currently pending before the Court and scheduled for hearing on October 14, 2011;

WHEREAS, Plaintiff has not yet filed any Opposition to the Motion to Dismiss, which Opposition is currently due on September 23, 2011;

WHEREAS, Defendant has informed Plaintiff that Defendant will seek to enforce an agreement to arbitrate entered into between Plaintiff and Defendant, by filing with the Court a Motion to Compel Arbitration;

WHEREAS, Defendant asserts that if said Motion to Compel Arbitration is granted, there will not be any need for the Court to consider or rule upon the issues raised in the Motion to Dismiss since all of Plaintiff's claims and controversies would then need to be resolved through binding arbitration;

WHEREAS, the Parties therefore agree that considerations of efficiency, judicial economy and overall fairness support continuation of the Motion to Dismiss;

WHEREAS, Defendant's counsel has checked with the Court's Courtroom Deputy and has learned that the first available date for hearing before the Court is in mid-January 2012.

WHEREAS, if the Court moves the hearing on the Motion to Dismiss, the Parties agree that the Opposition and Reply deadlines should also move to three weeks and two weeks prior to the hearing, respectively, in parallel to the current schedule for the Motion to Dismiss.

NOW, THEREFORE, IT IS HEREBY STIPULATED:

1. Defendant's Motion to Dismiss that is presently scheduled in this case for October 14, 2011, should be RESCHEDULED to January 20, 2012.

2. The Opposition to the Motion to Dismiss should be due three weeks before the Motion to Dismiss hearing.

3. The Reply in support of the Motion to Dismiss should be due two weeks before the Motion to Dismiss hearing.

1 4. Since Plaintiff will rely upon this Stipulation being approved by the Court for
2 purposes of deciding whether to file an Opposition under the current schedule, the Parties agree
3 that if the Court rejects this Stipulation for any reason and Plaintiff has not filed a timely
4 Opposition to the Motion to Dismiss, Defendant will not take the position that the Motion to
5 Dismiss is unopposed so long as the opposition is filed on the next court day after the Stipulation
6 is disapproved.

7 Dated: September 22, 2011

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10 By: /s/ Michael A. Aparicio
11 MICHAEL A. APARICIO
12 Attorneys for Defendant
VMware, Inc.

14 Dated: September 22, 2011 RICHARD BURCH
Bruckner Burch PLLC

16 By: /s/Richard Burch
17 RICHARD J. (REX) BURCH
18 Attorneys for Plaintiff
Elizabeth Moore Laughlin

ORDER

Pursuant to Stipulation, IT IS SO ORDERED.

22 Dated: September 26, 2011

 Edward J. Davila
UNITED STATES DISTRICT JUDGE

Edward J. Davila

UNITED STATES DISTRICT JUDGE

1 Additional Counsel:

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